

**ASSEMBLY BILL**

**No. 1645**

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**Introduced by Assembly Member Dababneh**

January 12, 2016

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An act to amend and repeal Section 12640.09 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1645, as introduced, Dababneh. Mortgage guaranty insurance.

Existing law, beginning January 1, 2018, requires, among other things, that a mortgage guaranty insurer limit its coverage to no more than a net of 30% at risk of the entire indebtedness to the insured for the class of insurance that insures against financial loss by reason of nonpayment of principal, interest, and other sums under any evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a first lien or charge on a residential building or a condominium unit or buildings designed for occupancy by not more than 4 families. Existing law, beginning January 1, 2018, also authorizes a mortgage guaranty insurer to extend its coverage for this class of insurance beyond the established limits if the excess is insured by a contract of reinsurance.

This bill would delete the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12640.09 of the Insurance Code, as
- 2 amended by Section 1 of Chapter 105 of the Statutes of 2012, is
- 3 amended to read:

1 12640.09. (a) A mortgage guaranty insurer shall limit its  
2 coverage for the class of insurance defined in paragraph (3) of  
3 subdivision (a) of Section 12640.02 to no more than a net of 30  
4 percent at risk of the entire indebtedness to the insured or, ~~in lieu~~  
5 ~~thereof~~, a mortgage guaranty insurer may elect to pay the entire  
6 indebtedness to the insured and acquire title to the authorized real  
7 estate security.

8 (b) (1) A mortgage guaranty insurer shall limit its coverage for  
9 the class of insurance defined in paragraph (2) of subdivision (a)  
10 of Section 12640.02, to no more than a net of 30 percent of risk  
11 of the combined indebtedness of all existing mortgage loan  
12 amounts secured by all liens or charges on the real estate. ~~In lieu~~  
13 ~~thereof~~, *Instead*, a mortgage guaranty insurer may elect to pay the  
14 entire indebtedness to the insured and acquire title to the authorized  
15 real estate security.

16 (2) Notwithstanding paragraph (1), a mortgage guaranty insurer  
17 may elect to insure a portfolio of loans secured by instruments  
18 constituting junior liens on real estate, ~~provided that if~~ the total  
19 amount at risk in any one portfolio shall not at any time exceed  
20 20 percent of the original principal amount of mortgage loans  
21 secured by junior liens.

22 (3) If the borrower is required to pay the cost of insurance  
23 written under paragraph (1) or (2), the lender shall disclose in  
24 writing to the borrower that the borrower is not a party to or a  
25 beneficiary of the mortgage guaranty insurance policy.

26 (4) Notwithstanding subdivision (a) and paragraph (1) of  
27 subdivision (b), if Freddie Mac or Fannie Mae increases the  
28 required amount of mortgage guaranty insurance, the commissioner  
29 may adopt regulations to increase the maximum coverage limitation  
30 of a mortgage guaranty insurer to an amount not to exceed a net  
31 of 35 percent of risk of the entire indebtedness.

32 (c) Notwithstanding subdivision (a) or (b), a mortgage guaranty  
33 insurer may extend its coverage for the class of insurance defined  
34 in paragraphs (2) and (3) of subdivision (a) of Section 12640.02  
35 beyond the limits established by subdivisions (a) and (b) of this  
36 section, ~~provided if~~ the excess is insured by a contract of  
37 reinsurance.

38 (d) (1) Notwithstanding any ~~provision of~~ law to the contrary,  
39 mortgage guaranty insurance or reinsurance may be ceded by

1 contract, ~~provided that~~ *if* the assuming insurer is either of the  
2 following:

3 (A) A mortgage guaranty insurer, which may be under common  
4 control with the ceding mortgage guaranty insurer, but which does  
5 not own, and is not owned by, in whole or in part, directly or  
6 indirectly, the ceding mortgage guaranty insurer.

7 (B) An insurer or reinsurer, that may be under common control  
8 with the ceding mortgage guaranty insurer, but that is not owned  
9 by, in whole or in part, directly or indirectly, the ceding mortgage  
10 guaranty insurer or another mortgage guaranty insurer, that writes  
11 any type or types of insurance or reinsurance and that meets the  
12 following requirements:

13 (i) Has paid-in capital and paid-in surplus totaling at least  
14 thirty-five million dollars (\$35,000,000).

15 (ii) Derives, on an annual basis, at least 50 percent of its  
16 premium income from reinsurance; or, alternatively, derives at  
17 least twenty-five million dollars (\$25,000,000) of premium income  
18 per year from reinsurance.

19 (iii) Establishes and maintains its share of the reserve liabilities  
20 required by Section 12640.16 if licensed in this state, or establishes,  
21 maintains, and funds in accordance with Section 922.4 or 922.5,  
22 its share of the reserve liabilities required by Section 12640.16 if  
23 not licensed in this state.

24 (iv) Establishes and maintains its share of an amount equal to  
25 the greater of either the reserve liabilities required by Section  
26 12640.04 or the policyholders surplus required by Section 12640.05  
27 in a segregated trust which meets the requirements of Section  
28 12640.091.

29 (2) ~~Nothing herein contained shall be deemed to~~ *This section*  
30 *does not* permit the assuming insurer or reinsurer to directly write  
31 mortgage guaranty insurance.

32 (3) Any assuming insurer or reinsurer and the ceding mortgage  
33 guaranty insurer shall establish and maintain in the aggregate the  
34 reserves required by Sections 12640.04 and 12640.16.

35 (e) ~~This section shall~~ *does not* apply to the California Housing  
36 Loan Insurance Fund or to any program it may develop in  
37 conjunction with any federal or federally sponsored mortgage  
38 lender or insurer.

1     ~~(f) This section shall remain in effect only until January 1, 2018,~~  
2     ~~and as of that date is repealed, unless a later enacted statute, that~~  
3     ~~is enacted before January 1, 2018, deletes or extends that date.~~

4     SEC. 2. Section 12640.09 of the Insurance Code, as added by  
5     Section 2 of Chapter 105 of the Statutes of 2012, is repealed.

6     ~~12640.09.—(a) A mortgage guaranty insurer shall limit its~~  
7     ~~coverage for the class of insurance defined in paragraphs (1) and~~  
8     ~~(3) of subdivision (a) of Section 12640.02 to no more than a net~~  
9     ~~of 30 percent at risk of the entire indebtedness to the insured or,~~  
10    ~~in lieu thereof, a mortgage guaranty insurer may elect to pay the~~  
11    ~~entire indebtedness to the insured and acquire title to the authorized~~  
12    ~~real estate security.~~

13    ~~(b) (1) A mortgage guaranty insurer shall limit its coverage for~~  
14    ~~the class of insurance defined in paragraph (2) of subdivision (a)~~  
15    ~~of Section 12640.02, to no more than a net of 30 percent of risk~~  
16    ~~of the combined indebtedness of all existing mortgage loan~~  
17    ~~amounts secured by all liens or charges on the real estate. In lieu~~  
18    ~~thereof, a mortgage guaranty insurer may elect to pay the entire~~  
19    ~~indebtedness to the insured and acquire title to the authorized real~~  
20    ~~estate security.~~

21    ~~(2) Notwithstanding paragraph (1), a mortgage guaranty insurer~~  
22    ~~may elect to insure a portfolio of loans secured by instruments~~  
23    ~~constituting junior liens on real estate, provided that the total~~  
24    ~~amount at risk in any one portfolio shall not at any time exceed~~  
25    ~~20 percent of the original principal amount of mortgage loans~~  
26    ~~secured by junior liens.~~

27    ~~(3) If the borrower is required to pay the cost of insurance~~  
28    ~~written under paragraph (1) or (2), the lender shall disclose in~~  
29    ~~writing to the borrower that the borrower is not a party to or a~~  
30    ~~beneficiary of the mortgage guaranty insurance policy.~~

31    ~~(4) Notwithstanding subdivision (a) and paragraph (1) of~~  
32    ~~subdivision (b), if Freddie Mac or Fannie Mae increases the~~  
33    ~~required amount of mortgage guaranty insurance, the commissioner~~  
34    ~~may adopt regulations to increase the maximum coverage limitation~~  
35    ~~of a mortgage guaranty insurer to an amount not to exceed a net~~  
36    ~~of 35 percent of risk of the entire indebtedness.~~

37    ~~(e) Notwithstanding subdivision (a) or (b), a mortgage guaranty~~  
38    ~~insurer may extend its coverage for the class of insurance defined~~  
39    ~~in paragraphs (1), (2), and (3) of subdivision (a) of Section~~  
40    ~~12640.02 beyond the limits established by subdivisions (a) and~~

1 ~~(b) of this section, provided the excess is insured by a contract of~~  
2 ~~reinsurance.~~

3 ~~(d) (1) Notwithstanding any provision of law to the contrary,~~  
4 ~~mortgage guaranty insurance or reinsurance may be ceded by~~  
5 ~~contract, provided that the assuming insurer is either of the~~  
6 ~~following:~~

7 ~~(A) A mortgage guaranty insurer, which may be under common~~  
8 ~~control with the ceding mortgage guaranty insurer, but which does~~  
9 ~~not own, and is not owned by, in whole or in part, directly or~~  
10 ~~indirectly, the ceding mortgage guaranty insurer.~~

11 ~~(B) An insurer or reinsurer, that may be under common control~~  
12 ~~with the ceding mortgage guaranty insurer, but that is not owned~~  
13 ~~by, in whole or in part, directly or indirectly, the ceding mortgage~~  
14 ~~guaranty insurer or another mortgage guaranty insurer, that writes~~  
15 ~~any type or types of insurance or reinsurance and that meets the~~  
16 ~~following requirements:~~

17 ~~(i) Has paid-in capital and paid-in surplus totaling at least~~  
18 ~~thirty-five million dollars (\$35,000,000).~~

19 ~~(ii) Derives, on an annual basis, at least 50 percent of its~~  
20 ~~premium income from reinsurance; or, alternatively, derives at~~  
21 ~~least twenty-five million dollars (\$25,000,000) of premium income~~  
22 ~~per year from reinsurance.~~

23 ~~(iii) Establishes and maintains its share of the reserve liabilities~~  
24 ~~required by Section 12640.16 if licensed in this state, or establishes,~~  
25 ~~maintains, and funds in accordance with Section 922.4 or 922.5,~~  
26 ~~its share of the reserve liabilities required by Section 12640.16 if~~  
27 ~~not licensed in this state.~~

28 ~~(iv) Establishes and maintains its share of an amount equal to~~  
29 ~~the greater of either the reserve liabilities required by Section~~  
30 ~~12640.04 or the policyholders surplus required by Section 12640.05~~  
31 ~~in a segregated trust which meets the requirements of Section~~  
32 ~~12640.091.~~

33 ~~(2) Nothing herein contained shall be deemed to permit the~~  
34 ~~assuming insurer or reinsurer to directly write mortgage guaranty~~  
35 ~~insurance.~~

36 ~~(3) Any assuming insurer or reinsurer and the ceding mortgage~~  
37 ~~guaranty insurer shall establish and maintain in the aggregate the~~  
38 ~~reserves required by Sections 12640.04 and 12640.16.~~

- 1     ~~(e) This section shall not apply to the California Housing Loan~~
- 2     ~~Insurance Fund or to any program it may develop in conjunction~~
- 3     ~~with any federal or federally sponsored mortgage lender or insurer.~~
- 4     ~~(f) This section shall become operative on January 1, 2018.~~